

### **REMARKS/ARGUMENTS**

Claims 24-29 and 31-53 remain in this application. Claims 1-23 and 31 have been cancelled without prejudice, and claims 24, 29, and 31-34 have been amended without prejudice. Applicants reserve the right to pursue such cancelled or amended subject matter in subsequent continuation or divisional patent applications. New claims 35-53 have been added. Support for the amendments to claim 24 and new claims 35-53 can be found throughout the present application, e.g., the last two paragraphs on page 10 of the present specification. Accordingly, no issues of new matter are believed to be raised by the above amendments to the claims.

### **Rejection Under 35 USC 102**

#### **I**

Claims 24-26, 29, 31, 33, and 34 were rejected under 35 USC 102 as being anticipated by US 2002/0143038 (“Bandyopadhyay et al.”). See Pages 2-3 of the Office Action. Applicants respectfully disagree. According to the Office Action, “Bandyopadhyay discloses a packaging kit comprising a first container containing a solid lyophilized epothilone analog and a second a sufficient quantity of an equal mixture of suitable nonionic surfactant and anhydrous ethanol to effect solution thereof.” See page 3 of the Office Action.

Independent claim 24 recites a “kit comprising a) a first container containing one or more pharmaceutical dosage forms.” As set forth on page 3, lines 7-9 of the present specification, the term dosage form is defined as an “orally administered liquid, solid, or semi-solid product for delivering a pharmaceutical active ingredient to the gastro-intestinal tract of a human.” Bandyopadhyay et al. discloses a parenteral formulation (see title and abstract of Bandyopadhyay et al.), which is not a “dosage form” as defined in the present application.

Further, in the interests of furthering the present application to allowance, Applicants have amended claim 24 to now recite a “kit comprising a) a first container containing one or more pharmaceutical dosage forms and a flavoring agent; and b) a second container containing one or more additional flavoring agents that are physically and chemically compatible with said dosage forms. (emphasis added)” Such a kit is not disclosed, nor

suggested, by Bandyopadhyay et al. as the formulation of Bandyopadhyay et al. is not intended to be orally administered, and thus containing flavoring agents.

Accordingly, Applicants respectfully request that this rejection under 35 USC 102 be withdrawn.

## II

Claims 24-26 and 31-33 were rejected under 35 USC 102 as being anticipated by US 5,628,799 (“Wenke et al.”). See Pages 3-4 of the Office Action. Applicants respectfully disagree. According to the Office Action, “Wenke discloses a kit comprising a first container and a dopa species solution containing a direct dye or, optionally, the primary intermediate and/or coupler, and a second container containing the oxidant solution.”

As with Bandyopadhyay et al., the kit recited in claim 24 is not disclosed, nor suggested, by Wenke et al. as the hair dye formulation of Wenke et al. is not intended to be orally administered.

Accordingly, Applicants respectfully request that this rejection under 35 USC 102 be withdrawn.

### **Rejections Under 35 USC 103**

Claims 24-34 were rejected under 35 USC 103(a) as being unpatentable over Bandyopadhyay et al. or Wenke et al. or US 2001/0056095 (“Mylari et al.”) in view of US 5,695,930 (“Weinstein et al.”). See Pages 4-5 of the Office Action. Applicants respectfully disagree

According to the Office Action, “Bandyopadhyay or Wenke or Mylari meets the claim limitations as described above but fails to include a third container comprising an additional quantity of same or different dosage form therein. However, a kit comprising a third container containing standard reagents is well known in the art as shown by Weinstein.” See pages 4-5 of the Office Action.

As discussed above, the kit recited in independent claim 24 is not disclosed, nor suggested, by Bandyopadhyay et al or Wenke et al. Such a kit is also not disclosed, nor suggested, by Mylari et al., which fails to disclose, or suggest, a “kit comprising a) a first container containing one or more pharmaceutical dosage forms and a flavoring agent; and b)

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a second container containing one or more additional flavoring agents that are physically and chemically compatible with said dosage forms (emphasis added)” as recited in claim 24.

Further, as with Bandyopadhyay et al or Wenke et al., the diagnostic kit of Weinstein et al. is also not intended to be orally administered (See abstract and claims of Weinstein et al.).

Accordingly, Applicants assert that the presently claimed invention would not have been obvious to a person of ordinary skill in the art at the time of the claims invention was made in light of these references. Thus, Applicants respectfully request that this rejection under 35 USC 103(a) be withdrawn.

### **Conclusion**

For the foregoing reasons, the present application is in condition for allowance. Accordingly, favorable reconsideration of the amended claims in light of the above remarks and an early Notice of Allowance are courteously solicited. If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned Attorney at the below-listed number.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/MCP5019/WEM.

Respectfully submitted,

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